

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Union City, CA)

BREUNERS HOME FURNISHINGS CORPORATION

Employer¹

and

Case 32-RC-4603

**WAREHOUSE UNION, LOCAL 6, INTERNATIONAL
LONGSHORE & WAREHOUSE UNION, AFL-CIO**

Petitioner

and

Case 32-RC-4612

BREUNERS HOME FURNISHINGS CORPORATION

and

**DISTRICT COUNCIL NO. 16, OF THE INTERNATIONAL
BROTHERHOOD OF PAINTERS AND ALLIED TRADES,
AFL-CIO**

Intervenor/Cross-Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

¹ The Employer's name appears as amended at the hearing.

² The Intervenor/Cross-Petitioner's name appears as amended at the hearing.

³ Briefs filed by the parties have been duly considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a Delaware corporation, with headquarters located in Lancaster, Pennsylvania, and a warehouse located in Union City, California, is engaged in the retail sale of home furnishings at stores located throughout the United States. During the past twelve month period, the Employer received in excess of \$500,000 in gross revenues and during that same period of time, purchased and received in excess of \$5,000 worth of goods which originated outside of the State of California. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Petitioner and the Intervenor/Cross-Petitioner are both labor organizations within the meaning of Section 2(5) of the Act.

4. The Petitioner and Intervenor/Cross-Petitioner claim to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In its petition dated March 29, 1999, Petitioner originally sought to represent a bargaining unit including all full-time and regular part-time techs, hilos, cage, binners, shipping and receiving, and dockworkers employed at the Employer's Union City, California facility; excluding all other employees, office clericals, guards, and supervisors as defined in the Act. In its petition dated April 15, 1999, Intervenor/Cross-Petitioner originally sought to represent a bargaining unit including all full-time and regular part-time furniture finisher/repair employees employed at the Employer's Union City, California facility; excluding all other employees. At the hearing, the Petitioner and Intervenor/Cross-Petitioner amended their petitions to jointly petition to represent a single bargaining unit including receiving lead/labelers, offloaders, hi-lo operators, IST (Interstore transfer) employees, parts employee, NAS (Not Available for Sale) employees, cycle count employees, rewarehousing employees, returns leads, returns employees, returns hi-lo operators, shop leads, shop techs, prep/binner leads, binners, fabric employees, and CPU (Customer Pick-up) employees. In their post-hearing briefs, the Petitioner and Intervenor/Cross-Petitioner agreed that the reconciler position should also be included in the bargaining unit. The Employer, on the other hand, contends that the only appropriate bargaining unit consists off all non-supervisory, non-managerial employees employed at the Union City facility, including all clerical employees.

The parties are in agreement that an appropriate bargaining unit in this case would include the following classifications of employees: receiving leads/labelers (2), off-loaders (2), hi-lo operators (10), IST employees (2), parts

employee (1), NAS employee (1), cycle count employee (1), re-warehousing employee (1), reconcilers (1), returns leads (1), returns (3), returns hi-lo operator (1), shop lead (1) and shop techs (10), prep/binners leads (3), binners (10), fabric employees (3), and CPU employee (1). There are 54 of these agreed upon employees. The parties stipulated and I find that Mark Phillips, the Employer's Western Regional District Manager and the top official in the facility; Stella Barbo, administrative operations manager; Linda Baiz, administrative assistant; Michelle DeHart, receiving supervisor; Shirley Warren, administrative supervisor; Stan Peters, warehouse manager outbound; and Miguel Gonzales, inventory control/returns supervisor; are all supervisors within the meaning of the Act. The following classifications, which presently include 16 employees, remain in dispute: IST/receiving clerk (1), receiving clerk (1), delivery processing (2), COD caller (1), miscellaneous (1), finalization (1), schedulers (7), and receptionists (2).

The Employer's Union City facility, herein the facility, is a furniture distribution center which serves 11 of the Employer's Bay Area retail facilities: five Breuners retail stores, five Thomasville retail stores and one Breuners clearance center. The facility consists of a single 130,000 square foot building which houses a warehouse as well as an enclosed two-story administrative office area. Two thirds of the building is taken up with furniture storage while the rest of the building houses the administrative offices, the receiving department, the inventory control/returns department, and the outbound processing department. The facility receives merchandise from manufacturers in North Carolina and Los Angeles by truck for distribution to customers and retail stores. In addition, the facility receives merchandise as interstore transfers (ISTs), as well as merchandise returned by customers. After receipt, the merchandise is processed and placed in storage for later shipment to customers or other of the Employer's facilities. The facility is composed of four departments: Receiving, Administrative, Inventory Control/Returns, and Outbound.

1. Receiving Department

The receiving department occupies an area behind and adjacent to the administrative offices. The receiving office is a small enclosure adjacent to the administrative office and near the employee break room. The function of the receiving department is to schedule inbound appointments for deliveries, receive freight by truck, identify and label it and then place it in the appropriate racks in storage so it can be later picked for outbound shipment. The receiving department receives merchandise from both outside vendors as well as other Employer-owned facilities, i.e.; interstore transfers (ISTs). Within the receiving department there are five truck bays for the receipt of merchandise from outside vendors and two for receipt of ISTs. (The truck bays for outbound freight are at the other end of the facility.) The receiving department employs twelve employees: one IST/receiving clerk, one receiving clerk, two receiving leads/labelers, two off-loaders, four hi-lo operators, and two IST employees. All but the IST/receiving clerk and the receiving clerk are stipulated to be in the unit and they perform traditional warehouse functions such as unloading merchandise

from trucks, attaching bar-code labels to each item and then transporting the items to the warehouse's large rack system for storage. Four employees work in the receiving office at least part of their time, two receiving leads/labelers as well as IST/ receiving clerk Judy Rodriguez, and receiving clerk Debra McDonald. The rest of the receiving department employees work in the warehouse area. Rodriguez and McDonald are supervised by Michelle DeHart who reports to the Receiving Department manager, a position which is currently vacant. DeHart is not responsible for supervising any other employees. The rest of the receiving department employees are supervised by the receiving manager.

Receiving clerk and IST/receiving clerk. Debra McDonald spends virtually all of her time at her desk in the receiving office processing paper work through her computer and spends only a “negligible” percentage of her time in the warehouse. Her primary function is to enter information into the facility’s computer system (GERS) from manifests (bills of lading) received from shipping companies about future deliveries to the facility. Judy Rodriguez’s duties, on the other hand, are more varied. One of Rodriguez’s duties involves generating and affixing bar code labels to furniture. All furniture delivered to the facility is given a bar code label before being stored. Rodriguez is responsible for generating bar code labels for all furniture received at the facility as interstore transfers. Once she has generated the bar code labels on her computer in the receiving office, she goes into the warehouse area adjacent to the receiving office and affixes the labels to the furniture. Although it varies somewhat, most days Rodriguez spends upward of 30% of her time on the warehouse floor labeling or performing other duties related to ISTs. The two receiving leads/labelers affix the bar code labels to furniture received from outside vendors. When not in the warehouse, Rodriguez spends her time in the receiving office processing paperwork related to ISTs and helping to schedule inbound delivery trucks.

2. Administrative Department

The administrative department is housed in an enclosed two-story office area right behind the main customer entrance. The delivery processing clerks, the COD caller, the finalization clerk, the miscellaneous clerk, schedulers, the parts clerk, the NAS clerk, the office helper, and the two receptionists work in the administrative offices as well as Mark Phillips, the administrative operations manager, the administrative assistant, the quality manager and the administrative supervisor. The administrative classifications in dispute are the delivery processing clerks, the COD caller, the finalization clerk, the miscellaneous clerk, the schedulers and the receptionists. The parties agreed that the office helper is not in the unit and that the parts and NAS employees are.

Receptionists. The receptionist desk is located on the first floor of the administrative office area by the public entrance to the facility. There are two receptionists, Sandra Shelton and Ferozan Shokoor. Shelton works Monday through Friday from 6 a.m. to 3 p.m. while Shokoor works Monday through Friday from 3 p.m. to 6 p.m. as well as Saturday from 7 a.m. to 3:30 p.m. The duties of

the receptionist include, among other things, answering phones, paging employees, greeting customers who come to the facility to pick-up merchandise, and coordinating customer pick-ups with John Villalobos, the CPU or customer pick-up employee who works in the outbound processing department. With regard to customer pick-ups, after greeting the customer, the receptionist enters the customer's sales order number into the computer and pulls up the relevant information about the order and checks to see if the order has been paid for. If the order has been paid for, the receptionist prints out the order and radios the CPU person about the pickup. The CPU then comes up to reception and picks up the paperwork after which he goes into the warehouse and pulls the merchandise so it can be taken over to the will-call entrance to the warehouse where the customer will pick up the merchandise. If the customer has not paid in advance, the receptionist contacts the person in charge of CODs at that time (either administrative supervisor Shirley Warren, finalization person Carol Yonan or COD caller Felecia Washington) who arranges for the customer to pay for the order. Once the payment is completed, the paperwork is forwarded to the CPU. In addition to the above, the receptionist generates hourly or daily productivity reports on the computer but each report takes only about 10 seconds to generate. The receptionists spend virtually all of their work time sitting at the reception desk and have no duties that require them to go into the warehouse. When the receptionist is on break or at lunch, one of the schedulers usually fills in. The receptionists are supervised by Linda Baiz who reports to both administrative operations manager Stella Barbo and Mark Phillips.

Finalization. Finalization employee Carol Yonan works in the administrative offices and her primary duty is to process the paperwork received from outside truck lines after the truck lines have delivered merchandise to customers. In addition, she also produces credit memos for customers after they return merchandise to the facility. As part of this task she sometimes goes into the warehouse to discuss a return with someone in the inventory control/returns office which is located on the warehouse floor. This happens about three times a week. She is supervised by administrative supervisor Shirley Warren.

COD caller. There is scant evidence in the record regarding the duties and responsibilities of COD caller Felecia Washington. Apparently, her duties deal with processing COD sales. She works within the administrative offices and works closely with administrative supervisor Shirley Warren.

Schedulers. The seven schedulers work in a first floor office near the reception desk, herein called the schedulers office. The primary function of the schedulers is to call customers to arrange for delivery of the furniture they ordered. The schedulers are also supervised by Shirley Warren.

Delivery Processing Clerks. The Employer presently employs two delivery processing clerks, Linda Woodside and Sherri Bohn. The delivery processing clerks work in the scheduler's office and are also supervised by Shirley Warren.

The primary duty of the processing clerks is to generate and process the paperwork associated with orders that have been filled at the facility and are scheduled to be shipped to customers. Two days before the scheduled delivery date, the delivery processing clerk generates the paperwork for the delivery. This paperwork then goes to the outside delivery firm⁴ which after routing the delivery, returns the paperwork to the delivery processing clerk who then assigns a truck number to the delivery. At this point the merchandise is available for picking by the outbound department.

In addition, the delivery processing clerks immediately process any “add-ons” and same day shipments. Add-ons involve additions to shipments already filled and scheduled for delivery. Once a manager or supervisor gives the processing clerk the paperwork for the add-on or same day delivery, the clerk notifies the outbound process manager or leads by telephone that the paperwork is on its way and then walks the paperwork to the onsite office of the outbound shipping firm which is at the opposite end of the warehouse from the administrative offices. From there, the paperwork is walked through the system. In addition, these clerks also call customers if an order has been scheduled and supposedly filled but for some reason is not in the warehouse or cannot be shipped.

The delivery processing clerks spend about 95% of their time in the scheduler’s office but they have some contact with warehouse personnel. If there is a problem or something arises out of the ordinary, an outbound lead may go into the office and speak to the delivery processing clerks. For example, an outbound lead might come in and speak to a delivery processing clerk if there is a piece of furniture that cannot be shipped because it is damaged or for some other reason. While there, the manager or lead may use one of the unused computers in this office (there are several computer terminals in this office, one of which is usually not being used). This happens from zero to six times a day.

Miscellaneous Clerk. The Employer presently employs one miscellaneous clerk, Marilyn Schafer, who works at a desk in the schedulers office and she is also supervised by Shirley Warren.

The primary job function of the miscellaneous clerk is customer service. Schafer spends between 80 and 90% of her time performing customer-related functions such as interacting with customers, store managers and sales people in the stores. She also places customer orders for mattresses and sometimes goes into the warehouse to identify a particular mattress. In addition, Schafer performs “VIP Quality Inspections” at the request of store managers or other customer service employees whereby she inspects a piece of furniture in the warehouse with “a fine tooth comb” to make sure it is exactly as the customer

⁴ There is an independent delivery company on the Employer’s premises that does delivery work for the Employer.

expects the piece to be. She spends between ten minutes and an hour each day in the warehouse mostly performing the VIP inspections and/or helping to identify mattresses. Like virtually all employees who work at the facility, she has participated in the Employer's recent inventories of the merchandise in the warehouse.

3. The Inventory Control/Returns Department

The parties stipulated that all non-supervisory employees employed in this department are within the unit. These employees include the one cycle count employee, the one rewarehousing and the one reconcile employees as well as the one returns lead, the three returns employees and one returns hi-lo operator. These employees perform traditional warehouse inventory control duties such as tracking all items in storage.

4. Outbound Processing.

The parties stipulated that all non-supervisory outbound processing employees are in the unit. Outbound processing department employees perform traditional shipping functions in an area of the warehouse near the office of the outside shipping company. The six hi-lo operators pick merchandise from the warehouse racks and deliver it to a staging area adjacent to the loading dock. The 10 binners and three prep/binner leads strip or remove the items from the cartons or other protective coverings in preparation for delivery to customers. The ten shop techs and one shop tech lead then inspect the items and if necessary do touch-up or perform needed repairs. The three fabric employees apply protective coatings to upholstered furniture prior to shipping. Once merchandise is ready to be delivered, it is moved by the binners to a staging area for pick-up by the trucking company. All outbound processing employees are supervised by the outbound manager. There is a small outbound processing office on the warehouse floor adjacent to the inventory control office.

Other Terms and Conditions of Employment

The facility is open Monday through Saturday between 6 a.m. and 7:30 p.m., and Sunday between 7 a.m. and 3:30 p.m. Most of the employees work a Tuesday through Saturday schedule while the rest, including the receiving department and three office clericals, work a Monday through Friday schedule. A few employees work on Sunday on a rotating basis

Each department manager does the hiring for his or her department although they are all subject to the same hiring guidelines. There is no uniform hourly wage scale at the facility. Most entry level positions at the facility start at \$8 or \$9 an hour, although some of the more skilled positions such as hi-lo operators start higher, and then wage rates branch off according to specialization. All new hires are evaluated after 90 days at which time they are

eligible for a wage increase. After that there is a yearly evaluation of employees in June at which time each employee is eligible for a raise. There are different wage caps for each classification.

All non-supervisory employees share a common break room, restrooms and parking facilities, are subject to the same employee handbook and are entitled to the same benefits, including vacation, holidays, pension and employee discounts. They also punch one of the two time clocks in the facility. All employees employed at the facility are invited to the same Christmas party. The same computer system is used throughout the facility although employees are generally only trained on how to use the system for their specific jobs. All employees receive safety training, sometimes by department and sometimes facility wide.

All job openings in the facility are posted and open to any qualified employee. The record reflects four employees who have transferred between departments. One employee transferred from returns to the receiving department; another transferred from customer service to a labeler position in receiving department and then into the miscellaneous position in the administrative department; another transferred from hi-lo operator into a receiving lead/labeler in the receiving department; and another transferred from the inventory control/returns department into the finalization position in the administrative department. The record did not disclose any evidence of temporary transfers.

ANALYSIS

The issue here is whether the unit sought to be jointly represented by the Petitioner and Intervenor/Cross-Petitioner is an appropriate unit. Since the Petitioner and Intervenor/Cross-Petitioner seek to represent a warehouse unit which excludes all administrative clericals as well as two receiving clericals, the issue becomes: do the clericals which the Petitioners wish to exclude share such a strong community of interest with the warehouse employees as to require their inclusion in the petitioned-for warehouse unit. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). For the reasons discussed below, I find, with two exceptions, that they do not and I find, therefore, that the petitioned-for unit, with two additions, is an appropriate unit.

1. Administrative Clericals

The administrative clericals that are in dispute in this matter share a sufficient separate and distinct community of interest that they are not required to be included in a warehouse unit.

Receptionists. The receptionists spend virtually all of their work time at the reception desk on the first floor of the administrative offices by the main public entrance to the facility and do not have any duties that take them into the

warehouse. In addition, the primary duties of the receptionists are to greet customers, answer telephones, relay messages and page other facility personnel which are traditional office clerical duties. Further, the receptionists are designated as administrative employees on the Employer's organization charts and are directly supervised by the administrative operations manager. While the receptionists do process paperwork for customer pickups and coordinate the pickups with the CPU employee when customers come to pick up merchandise and therein have face to face contact with the CPU employee in the front office, this interaction and contact with a warehouse employee is not sufficient to require the inclusion of the receptionists in the petitioned-for warehouse unit. *Wickes Furniture*, 255 NLRB 545 fn.2 (1981) Similarly, while the receptionists use the computer terminal on the reception desk to generate hourly and daily productivity reports, the generation of such reports is a typical office clerical function and does not transform the receptionists into plant clericals. *Virginia Manufacturing Co.*, 311 NLRB 992 (1993). In view of the above, and the record as a whole, I conclude that the receptionists do not share such an overwhelming community of interest with the warehouse employees to be required to be included in the petitioned-for unit.

Schedulers, COD clerk, Finalization clerk. All of these employees work in the administrative offices, are classified as administrative employees and are supervised by the administrative supervisor Shirley Warren who reports directly to the administrative operations manager. Moreover, they have very limited, if any, work-related contact with warehouse employees. In view of the above, and the record as a whole, I conclude that these employees do not share such an overwhelming community of interest with the warehouse employees to be required to be included in the petitioned-for unit.

Delivery Processing Clerks. These two employees, classified as administrative employees, work in an office within the administrative offices alongside the schedulers and the miscellaneous clerk. They are also supervised by Shirley Warren. These employees spend 95% of their time in the office working alongside the schedulers and miscellaneous clerk and have only very limited contact with warehouse employees, primarily when something out of the ordinary comes up in the outbound processing area and an outbound lead or manager comes into their office to discuss the problem. This limited contact between the delivery processing clerk and warehouse employees is not sufficient to compel their inclusion in the warehouse unit. *Wickes Furniture*, supra. In view of the above, and the record as a whole, I conclude that these employees do not share such an overwhelming community of interest with the warehouse employees that would require their inclusion in the petitioned-for unit.

Miscellaneous Clerk. The miscellaneous clerk works at a desk alongside the schedulers and the delivery processing clerks, is classified as an administrative employee, and is directly supervised by Shirley Warren. This clerk spends 80 to 90% of her time performing customer service work in the office. While the miscellaneous clerk goes into the warehouse for a short period of time

on a daily basis to inspect or identify mattresses and as a result has some interaction with warehouse employees, I find that her warehouse duties are incidental to her primary duties and do not require her inclusion in the unit. *Virginia Manufacturing Co.*, supra; *Nuturn Corporation*, 235 NLRB 1139 (1978); *Crest Industries*, 276 NLRB 490, 495 (1985). Furthermore, while the miscellaneous clerk has participated in recent inventories, the Board has long held that such participation is not sufficient to require the inclusion of such employees in a warehouse unit. *Wickes*, supra at 547. In view of the above, and the record as a whole, I conclude that this employee does not share such an overwhelming community of interest with the warehouse employees to be required to be included in the petitioned-for unit.

2. Receiving Department

The two receiving department employees in dispute in this matter share such a strong community of interest with other warehouse employees that they must be included in any warehouse unit.

IST/Receiving Clerk. The IST/ receiving clerk as well as the receiving clerk whose placement in the unit, as discussed below, is also warranted, share the receiving office which is located on the warehouse floor with the two receiving leads/labelers who are stipulated to be in the unit. The IST/receiving clerk spends upwards of 30% of her time each day in the warehouse labeling IST merchandise, work which is identical to that done by the receiving leads/labelers. She spends the rest of her time in the receiving office generating IST labels, processing paperwork related to ISTs or helping to schedule inbound delivery trucks, work that is clearly functionally integrated with the other receiving department work. The IST/ receiving clerk and the receiving clerk are the only unit employees supervised by Michelle DeHart who reports directly to the receiving manager. In view of the nature of the work the IST/ receiving clerk performs, both in the receiving office and in the warehouse, and the location of that work, I conclude that the IST/receiving clerk must be included in the warehouse unit. *John A. Hansen Co.*, 293 NLRB 63 (1989) and *Sears Roebuck & Co.*, 220 NLRB 1224 (1975), herein called *Sears I*.

Receiving Clerk. While the receiving clerk's duties are clerical in nature and markedly different than the work of the receiving employees who are stipulated to be in the unit, her work is functionally integrated into the work of the receiving department, i.e., she enters into the computer data from the shipping manifests about future deliveries to the facility which will be handled by the receiving department. In view of the location of the receiving clerk's work, the fact that she shares the work space with bargaining unit employees, has common supervision with unit employees, and the fact that her work is functionally integrated into the work of the receiving department, I conclude that the receiving clerk is a plant clerical and is required to be in the warehouse unit. *Broyhill & Associates*, 298 NLRB 707, 712 (1990); *Hansen*, supra; *Sears I*, supra.

In its post hearing brief, the Employer makes a number of arguments in support of its contention that the only appropriate unit at the facility is a wall-to-wall unit including all clerical employees. The Employer's primary argument is that all the clericals must be included in any unit found appropriate because they are fully integrated into the receiving, storing and shipping operation of the facility. In that regard, the Employer argues that the clericals perform functions which are intricately related to the process of the warehouse and without which the warehouse could not function.

In support of these arguments, the Employer relies primarily on the Board's decisions in *Hansen*, supra and *Sears I*, supra. In *Hansen*, the Board held that a clerical employee who worked in an office area very close to a warehouse preparing, inter alia, picking tickets for the warehouse was a plant clerical. Similarly, in *Sears I*, the Board found that a number of "warehouse" clericals and inventory control clericals who worked in an office on the warehouse floor were plant clericals and were required to be included in any appropriate warehouse unit. Based on these two and other similar cases⁵, the Employer has discerned a rule that if clerical employees are fully integrated into the operation of a warehouse, they must be required to be part of any warehouse unit. However, neither the case law cited by the Employer nor well established Board law supports the existence of such a rule or the conclusion that all clericals employed at the Employer's facility must be included in any appropriate unit.

In this regard, in *Sears Roebuck & Co.*, 235 NLRB 678 (1978), herein called *Sears II*, the Board explicitly rejected the Employer's "rule" and found that despite substantial functional integration between the office clericals and warehouse employees, the clericals were not required to be included in the warehouse unit because the warehouse employees performed traditional warehouse work, had separate supervision and occupied a separate and distinct work area. Id. 679-80. The clericals in *Sears II*, as the administrative clericals in the instant case, worked in a separate office area, made arrangements for the delivery of sold goods, and routinely handled documents for shipments received at the warehouse, returns by customers and COD orders. The Board in *Sears II*, distinguished its findings in *Sears I* based on the supervisory, geographic and departmental separateness of warehouse employees in the petitioned-for unit in *Sears II*. Id. fn. 5. The Board in *Wickes*, supra, also found that office clerical and will-call clericals were not required to be in the petitioned-for unit even though their duties were fully integrated into the operation of the warehouse for the same

⁵ The Employer cited *Jacob Ash Co.*, 224 NLRB 74 (1976), *Fleming Foods*, 313 NLRB 948 (1994), and a number of other cases to support its contention that all facility employees were required to be in any appropriate unit. However, these cases are distinguishable on the same basis as *Hansen* and *Sears I*. See discussion infra.

reasons given in *Sears II*.⁶ Thus, contrary to the Employer's contention, the Board does not mandate that all clerical employees at a location who perform work that is integrated into the operation of an on-site warehouse be included in any warehouse unit.

Furthermore, the facts of the cases relied on by the Employer are clearly distinguishable from the facts of the instant case in certain very important respects. In that regard, while the clericals required to be included in the warehouse unit in *Hansen* and *Sears I* were functionally integrated into the operation of the warehouse, they also shared common supervision with the warehouse employees, worked very close to them and had substantial interaction with them. In the instant case, as in *Sears II* and *Wicks*, the disputed administrative clericals do not share common supervision with the warehouse employees, work in a separate office area and have limited if any interaction with warehouse employees. Thus, even the cases relied on by the Employer do not require the inclusion of all the clericals in the petitioned-for unit.

The Employer also argues that prior collective bargaining history supports its position that all employees at the facility must be included in the petitioned-for unit. In support of this argument the Employer points to the evidence in the record that for a period of time prior to 1994, it operated a distribution center/warehouse in Fairfield, California where all employees employed at that center were covered by a collective bargaining agreement between the Employer and Teamsters Local 490. The most recent collective bargaining agreement was effective by its terms from July 1, 1992 to June 30, 1995. However, in 1994 the Employer went into bankruptcy, closed the Fairfield distribution center and terminated its contract with the Teamsters. The Employer continued to operate while in bankruptcy but did not reopen the Fairfield center but instead contracted to use a distribution center at the present Union City location. The employees at the facility were not organized. In September, 1995, the Employer took over the operation of the Union City facility.

The prior bargaining history between the Employer and the Teamsters at the closed Fairfield center is not sufficient to establish a "pattern of collective bargaining." *Dezcon, Inc.*, 295 NLRB 109, 112. In this regard, the record reflects that the Employer at some point prior to bankruptcy also operated a warehouse in Benecia, California but the record is unclear about which, if any, employees at that facility were covered by a collective bargaining agreement. Also, the record reveals that prior to entering bankruptcy, many of Breuners' retail stores in the Bay Area had attached warehouses where, in at least some locations, some employees were covered by collective bargaining agreements. Clearly, in view of these rather vague and inconclusive facts, the record does not demonstrate a

⁶ See also, *Crest Industries Corp.*, supra, where for the same reasons relied on in *Sears II* and *Wicks*, the Board found that clericals were not required to be included in a petitioned-for warehouse unit.

pattern of collective bargaining which would dictate that the clericals be included in any appropriate unit.

Furthermore, while all the employees employed at the facility do share many of the same terms and conditions of employment, in view of the above-cited facts, this does not mandate that all employees be included in any appropriate unit. *Red Lobster*, 300 NLRB 908 (1990).

In sum, I find that the record as a whole does not support the Employer's contention that the only appropriate unit at the facility is a wall-to-wall unit. In fact, I find that only the IST/receiving clerk and the receiving clerk must be added to the petitioned-for unit. The disputed administrative clericals will be excluded from the petitioned-for unit.

Accordingly, I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time IST/receiving clerks, receiving clerks, receiving lead/labelers, offloaders, hi-lo operators, IST (Interstore transfer) employees, parts employees, NAS (Not Available for Sale) employees, cycle count employees, rewarehousing employees, reconcile employees, returns leads, returns employees, returns hi-lo operators, shop leads, shop techs, prep/binners leads, binners, fabric employees, and CPU (Customer Pick-up) employees, excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 56 employees in the bargaining unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁷ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period,

⁷ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be jointly represented by **DISTRICT COUNCIL NO. 16, OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO, and WAREHOUSE UNION, LOCAL 6, INTERNATIONAL LONGSHORE & WAREHOUSE UNION, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before May 14, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 21, 1999.

Dated at Oakland, California this 7th day of May, 1999.

/s/James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5211

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440-1760-1920-8000
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